

FILED DEC 19 07 10 00 AM '04

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

TRICIA SOMERS and LACY SOMERS,

Civ. No. 04-6328-AA

Plaintiffs,

ORDER

v.

DESCHUTES COUNTY, a political  
subdivision of the State of  
Oregon, by and through the  
DESCHUTES COUNTY SHERIFF,

Defendant.

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AIKEN, Judge:

Plaintiffs filed suit alleging claims under 42 U.S.C. § 1983 and state common law arising from the sexual abuse of plaintiffs by a former Deschutes County sheriff's deputy. On November 16, 2004, this court stayed all discovery other than document discovery pending resolution of criminal cases against the former Deschutes County sheriff's deputies whose actions form the basis of

plaintiff's Complaint. Fact discovery remains stayed.

Plaintiffs now move for partial summary judgment against defendant's affirmative defenses of statute of limitations and untimely tort claims notice. Defendant opposes the motion, in part because it cannot obtain facts to support a response with the stay of discovery in place. I agree.

Pursuant to Rule 56(f), if a party opposing summary judgment "cannot for reasons stated present by affidavit facts essential to justify the party's opposition," the court may deny the motion for summary judgment or continue the motion to allow additional discovery, or "make such other order as is just." A movant seeking grant of continuance for further discovery must demonstrate (1) diligent pursuit of its previous discovery opportunities, and (2) demonstrate how allowing additional discovery will preclude summary judgment. See California Union Ins. Co. v. American Diversified Savings Bank, 914 F.2d 1271, 1278 (9th Cir. 1990).

Here, defendant cannot respond to the assertions made in support of plaintiffs' motion absent further discovery. Plaintiffs argues that defendant, Deschutes County, is estopped from asserting a statute of limitations or untimely tort claim notice defense, or alternatively, that the statute of limitations should be tolled, because of intimidation and threats by the former sheriff's deputy. However, whether plaintiffs' motion may be granted depends on the circumstances surrounding the alleged threats and intimidation.

Absent the opportunity for discovery, defendant cannot adequately respond.

Accordingly, plaintiff's Motion for Partial Summary Judgment (doc. 10) is DENIED with leave to renew when the stay of discovery is lifted.

IT IS SO ORDERED.

Dated this 15 day of December, 2005.

A handwritten signature in cursive script, reading "Ann Aiken", written in black ink.

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Ann Aiken  
United States District Judge